



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the **29th day of January, 1996**

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**U.S.-LIMA COMBINATION SERVICE
PROCEEDING (1996)**

Docket OST-96-1037

Application of

AMERICAN AIRLINES, INC.

Docket OST-95-949

for allocation of 7 U.S.-Peru frequencies
(Dallas/Ft. Worth-Lima, Peru)

ORDER INSTITUTING PROCEEDING

SUMMARY

By this order we institute the **U.S.-Lima Combination Service Proceeding (1996)** to allocate seven weekly frequencies to provide scheduled combination service between a point in the United States other than Miami or Fort Lauderdale and Lima, Peru, effective November 1, 1996.

BACKGROUND

Under the 1986 Air Transport Agreement between the United States and Peru there are no limits on the number of U.S. carriers that may provide scheduled combination air services. However, the number of weekly frequencies that U.S. carriers may operate is limited. Through October 31, 1996, U.S. carriers may operate a total of 31.5 weekly frequencies. Effective November 1, 1996, the

number of weekly flights increases to 42.¹ Of the 42 weekly frequencies available November 1, 1996, no more than 28 may be used for services in the Miami/Fort Lauderdale-Lima market, with the remaining 14 available for services at other U.S. cities. Of the 31.5 weekly frequencies now available, 17.5 have been allocated to American and 7 have been allocated to United for services from Miami and 7 have been allocated to Continental Airlines for Newark-Lima service. (See Orders 95-4-21, 95-7-23, and 95-12-26). On November 1, 1996, an additional 3.5 weekly frequencies become available for Miami/Ft. Lauderdale service and 7 weekly frequencies become available for service from other U.S. gateways.

The amended agreement also provides for intermediate and beyond rights for U.S. carrier services subject to certain frequency limitations. Specifically, U.S. carriers may serve Panama City, Panama (up to six weekly narrow-body frequencies); Guayaquil and Quito, Ecuador (3 weekly frequencies each); Bogota (7 weekly frequencies increasing to 14 weekly effective November 1, 1996); Cali, Colombia (blind-sector only and limited to 1.5 weekly frequencies); and Mexico City and Cancun, Mexico (blind sector only) as intermediate points for their Peru services. U.S. carriers may also operate beyond Lima to La Paz, Bolivia, and Asuncion, Paraguay, which will be considered one route; and to Santiago, Chile, and Buenos Aires, Argentina. Beyond services to La Paz/Asuncion are limited to 3 weekly narrow body frequencies; and 3 weekly frequencies each to Santiago and Buenos Aires.

On December 19, 1995, American Airlines filed an application in Docket OST-95-949 for allocation of the seven 1996 U.S.-Peru combination frequencies available for services to points other than Miami or Fort Lauderdale. American proposes to provide daily nonstop service between Dallas/Ft. Worth and Lima, using 188-seat B-757ER aircraft, beginning November 1, 1996.²

Answers to American's application were filed by Continental, the Dallas/Ft. Worth Parties, and the City of Houston and Greater Houston Partnership (Houston);³ American and the Dallas/Ft. Worth Parties filed replies to the answers.⁴ Continental opposes the application, stating that it intends to seek seven weekly frequencies to provide Houston-Lima service. In view of these circumstances, Continental urges the Department to institute a proceeding to award all Peru frequencies that become available November 1, 1996, including the 3.5 Miami-Lima frequencies, so that we will have all possible options for U.S.-Peru service for evaluation prior to award. The Dallas/Ft. Worth Parties support the immediate grant of American's application, or alternatively the institution of a comparative carrier selection proceeding if there are other applications for the frequencies. Houston supports the position of Continental. In reply, American states that in the absence of competing applications, its request should be granted without further procedures. Since Continental did not file an application at this time, American argues that the Department should deem American's application to be unopposed and grant it promptly. The Dallas/Ft. Worth Parties support the position of American in its reply.

DECISION

We have decided to institute the **U.S.-Lima Combination Service Proceeding (1996)** to select a primary and backup carrier(s) for service between the U.S. and Lima from U.S. gateways (other

¹ The numbers in the text refer to frequencies operated with narrow-body aircraft. The Agreement also prescribes certain frequency equivalents if larger aircraft are used. Specifically, one wide-body aircraft (L-1011, DC-10, A-300, B-747SP, B-767 or similar aircraft) requires 1.5 narrow-body aircraft frequencies (DC-8, MD-80, B-707, B-737, B-757 or similar aircraft). A B-747-100 or similar aircraft requires two narrow-body aircraft frequencies.

² By Notice dated December 28, 1995, we extended the due date for answers to American's application to January 12, 1996.

³ By letter United Air Lines notified the Department that it did not intend to file an answer to American's application.

⁴ The Dallas/Ft. Worth Parties accompanied their reply with a motion for leave to file, which we will grant.

than Miami or Fort Lauderdale) using the seven weekly frequencies available November 1, 1996. The rights to serve Peru constitute valuable opportunities for U.S. carriers. American has already filed an application seeking these rights, and Continental has stated that it also intends to seek the authority at issue. The record thus indicates that at least two U.S. carriers are interested in the rights available and that carrier selection procedures will be necessary for award of this authority.

We invite all U.S. carriers interested in using the seven weekly frequencies available November 1, 1996, for non-Miami/Fort Lauderdale-Lima service to file certificate applications in the docket established herein no later than February 6, 1996. We will consolidate the application of American in Docket OST-95-949 for the authority at issue into the newly established docket.⁵

Seven frequencies are available for the services at issue. It is our expectation that each of the applicants in this case will seek to use the full level of service

⁵ American's application is for allocation of frequencies and not for certificate authority. American already holds temporary experimental certificate authority to provide Dallas/Ft. Worth-Lima service on Route 389. This authority was awarded American as a result of the transfer to American of Eastern Air Lines' Central and South America route authority. Order 90-5-5. That authority was due to expire on April 8, 1993. American filed a timely application for renewal of that authority, and its authority remains effective under the automatic extension provisions of 5 U.S.C. 558(c) of the Administrative Procedures Act, as implemented by Part 377 of our regulations (14 CFR Part 377), pending action on its renewal application. An issue in this case, if American were selected, would be what terms, conditions, or limitations should be imposed on its existing underlying authority.

available. It is possible, however, that applicants may seek only a portion of the available frequencies. Therefore, we will not predetermine here how many carriers should be authorized to use the available frequencies. That decision is best made based on the record developed in this case.

Whether certificating carriers for this service is consistent with the public convenience and necessity will not be at issue. The traffic rights involved constitute a valuable resource obtained in exchange for granting Peru route opportunities for its airlines to serve the United States. The introduction of additional U.S. carrier service will provide new service options to travelers and shippers and will enhance competition in the U.S.-Peru market. In these circumstances, we find that the public interest clearly calls for use of the rights.

In determining which carrier(s)/gateway(s) will be authorized, our principal objective will be to maximize the public benefits that will result from award of the authority in this case. In this regard, we will consider which applicants will be most likely to offer and maintain the best service for the traveling and shipping public. We will also consider the effects of the applicants' service proposals on the overall market structure and level of competition in the U.S.-Peru market, and any other market shown to be relevant, in order to promote an air transportation environment that will sustain the greatest public benefits. In addition, we will consider other factors historically used for carrier selection where they are relevant.

The amended U.S.-Peru agreement provides for intermediate and beyond services, subject to frequency limitations, involving certain countries where U.S. carrier entry is limited, such as Colombia and Argentina.⁶ In addition, only certain routes remain available for service to Ecuador and Mexico. We are prepared to consider in this proceeding the award of intermediate and/or beyond authority set forth in the amended agreement, provided that such proposals are consistent with, and may be implemented under, the relevant bilateral aviation agreements.

Concerning the issue of backup authority, it is possible that carriers in this case may propose service from different gateways, since the route rights under the amended agreement provide for service from any gateway other than Miami or Ft. Lauderdale. The considerations that lead to the selection of a carrier and gateway are entirely interrelated, and a gateway's selection for primary service by a particular carrier does not mean that a different carrier at the same city would necessarily represent the next-best alternative. Our primary focus in awarding backup authority is to maximize use of the available route rights in the event that the primary carrier does not institute service or discontinues service during its first year of operations, not to ensure continuation of service from a particular gateway.

We will not include in this proceeding allocation of the 3.5 frequencies for Miami/Fort Lauderdale-Lima service that also become available November 1, 1996, as Continental suggests. Carrier selection procedures were not necessary last year with respect to long-term allocation of Miami-Lima frequencies and it is not clear that comparative procedures will be necessary for the allocation of the 1996 Miami/Fort Lauderdale frequencies. Furthermore, no carrier has applied yet for the Miami/Fort Lauderdale authority, whereas we already have interest actively being

⁶ In the American/Eastern/Continental Latin America route transfer, Docket 46703, the Department transferred Eastern's Miami-Lima authority to American. In that transfer American indicated that it would operate certain of the fifth-freedom intermediate and beyond services previously operated by Eastern. Specifically, American stated that it would exercise fifth-freedom rights between Panama City and Lima and between Lima and Santiago. Order 90-4-11 at 8, footnote 10 and Order 90-5-5 at 10. American has not exercised those rights for several years. Thus, the fifth-freedom authority awarded American is now dormant. United has filed an application for allocation of available fifth-freedom rights between Lima and Santiago. That application is currently pending.

expressed in securing non Miami/Fort Lauderdale authority. To satisfy our goal of addressing that interest on an expedited basis, we regard it the best course to keep this case singularly focused.⁷

Procedures and Evidence

We believe that written, non-oral, show-cause procedures under Rule 1750 of our regulations (14 CFR 302.1750) are appropriate and that by using these procedures we can establish a complete evidentiary record and make a selection with the least possible delay and without unnecessary costs to the applicants. We find no material issues of fact that would warrant an oral evidentiary hearing in this case, and we note that no party commenting on American's application requested oral, evidentiary procedures.

We have appended to this order an evidence request for the benefit of the parties to this case.

The authority awarded in this proceeding will be in the form of temporary, experimental certificates of public convenience and necessity under 49 U.S.C. section 41102(c). The duration of authority will be five years for the primary carrier(s) and one year for the backup carrier(s), unless the latter authority is activated during that time, in which case, it will continue in effect for five years. The seven frequencies will be allocated to the primary carrier for a one-year period.

⁷ We intend to issue a notice shortly seeking applications from carriers interested in using the 1996 Miami/Fort Lauderdale frequencies, and we intend to process those applications in a separate proceeding.

Procedural Timetable

The amended U.S.-Peru agreement provides valuable new rights for U.S. carriers to serve Peru effective November 1, 1996. We believe that it is in the public interest to select carriers on a timetable that will allow the selected carrier(s) to enjoy the maximum benefit of these rights as soon as they become available. Therefore, we intend to proceed on an expedited basis. To this end, we are establish the following procedural schedule for submissions in this case:

Applications	February 6, 1996 ⁸
DOT Information Responses	February 6, 1996
Direct Exhibits	February 20, 1996
Rebuttal Exhibits	March 5, 1996
Briefs	March 19, 1996

All dates are delivery dates. An original and four copies of all submissions are to be received at the Department's Docket Section no later than the dates indicated.

ACCORDINGLY,

1. We institute the **U.S.-Lima Combination Service Proceeding (1996)**, Docket OST-96-1037, to be decided by non-oral, show-cause procedures under Rule 1750 of our regulations (14 CFR 302.1750);

2. The proceeding in ordering paragraph 1 will consider the following issues:

a. Which primary and backup carrier(s)/gateway(s) should be selected to provide service between a point in the United States other than Miami/Ft. Lauderdale, Florida and Lima, Peru, consistent with the provisions of the amended U.S.-Peru aviation agreement;

b. How should the seven available frequencies be allocated among the newly selected and/or incumbent carriers for a one-year period;

c. What other authorities, including route integration authority, should be granted in conjunction with the Peru services authorized in this proceeding; and

d. What terms, conditions, and limitations should be imposed on any existing certificate authority, or any new certificate authority awarded in this proceeding;

3. We consolidate the application of American Airlines, Inc., in Docket OST-95-949, for allocation of seven weekly frequencies for Dallas/Ft. Worth-Lima service into the **U.S.-Lima Combination Service Proceeding (1996)**, Docket OST-96-1037;

4. We require that petitions for reconsideration of this order be filed no later than 5 calendar days from the date of service of this order; answers to such petitions shall be due no later than three calendar days thereafter;

5. We grant the motion of the Dallas/Ft. Worth Parties for leave to file; and

6. We will serve this order on American Airlines, Inc.; United Air Lines, Inc.; Carnival Airlines, Inc.; Continental Airlines, Inc.; and all other U.S. certificated air carriers; the Dallas/ Ft. Worth Parties; and the City of Houston and the Greater Houston Partnership; the Ambassador of Peru in Washington, D.C.; and the U.S. Department of State (Office of Aviation Negotiations).

⁸ We have not provided for answers to applications. Applicants may address in their exhibits and briefs any issues raised in any other carrier's application.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this order is available on the World Wide Web at
<http://www.dot.gov./dotinfo/general/orders/aviation.html>.*

EVIDENCE REQUEST

I. Public Disclosure of Data

Pursuant to sections 241.19-6 and 399.100 of the Department's regulations, it is determined that the Department's T-100 data for the period January 1, 1991, through final Department decision in this proceeding, and the Origin & Destination Survey Data (Data Bank 2-A) for the period January 1, 1991, through final Department decision in this proceeding, for operations between the United States and Peru, are material and relevant to a final determination of the issues in this case. Those data have been released to the U.S. carriers and U.S. nonairline civic and governmental parties to this proceeding, who will be free to use those data to the extent they deem necessary.

II. Procedures and Ground Rules

In the interest of a complete and adequate record, the parties should submit the following information in the form of exhibits. The exhibits should contain sufficient detail, including sources, bases, all assumptions, and methodology, so that, without further clarification, any party can derive the final results from the basic data.

III. Request for Information and Evidence

A. Information Responses

1. DOT Data

The Economic & Financial Analysis Division of the Office of Aviation Analysis will make available to the parties the following data in the form of information responses⁹:

- (a) T-100 nonstop segment data, by month, beginning January 1, 1992, through the latest available month, between the United States, on the one hand, and Peru, on the other.
- (b) T-100 on-flight market data, by month, beginning January 1, 1992, through the latest available month, between the United States, on the one hand, and Peru, on the other.

⁹Due to the volume of this material, we will be unable to print and distribute copies to the parties. One copy of these materials will be made available for the parties' use in Room 4201, 400 Seventh Street, S.W., Washington, D.C. In addition, the Department will issue on request copies of the information responses on computer diskettes. Parties who wish to receive diskette versions of the information responses, should contact the Economic & Financial Analysis Division, at (202) 366-2352. The Department will make this material available no later than the date specified in the text of the order.

Use of the data contained in the Department's Information Responses (either from hard-copy or computer diskette) is restricted to representatives of applicant carriers and interested U.S. parties (*i.e.*, those that have filed applications or comments) in this proceeding.

(c) For the Calendar Years 1991 through September 30, 1995, O&D traffic from Table 15 of the Department's O&D Survey between all U.S. points, on the one hand, and Lima, Peru, on the other.

(d) For the 12 months ended September 30, 1995, from the Department's O&D Survey between all U.S. points, on the one hand, and Lima, Peru, on the other, that used the following gateways: Miami, New York, Los Angeles, and "all others."

B. Direct Exhibits

The applicant carriers are directed to provide the sources, in exhibit form, for their traffic forecast. This information shall be set forth in such a manner that any other party could construct a traffic forecast from the exhibits without the necessity of having the actual source document at hand, particularly if the source is other than the Department's O&D Survey. Indicate growth rates, stimulation rates, and participation rates, as well as the bases for such rates.¹⁰

The source data for traffic forecasts made by any party shall be (1) the O&D Survey and/or (2) the U.S. International Air Travel Statistics (commonly referred to as INS Data), or (3) a combination of these data sources. Any party may provide a separate, additional forecast based on other source data if it wishes, but if so, that party should clearly explain the differences between its data source and the two specified above (e.g., differences in collection methods, or adjustments made to raw data).

1. Applicant Carriers

Submit, at a minimum, the following:¹¹

(a) Firm date for instituting service in the market, a breakdown for peak and off-peak seasons, and single-plane and nonstop-to-nonstop connecting schedules proposed to be operated in the forecast year (12 months ending December 31, 1997). Schedules should contain flight numbers, complete routings from origin to destination (including behind-gateway and beyond-gateway points), departure and arrival times, equipment types (including seat configuration by class of service),

¹⁰ The base year for traffic forecasting purposes should be 12 months ended September 30, 1995, and the forecast year should be the 12 months ended December 31, 1997.

¹¹ The original filing should be on 8½" x 11" white paper using dark ink and be unbound without tabs, which will expedite use of our docket imaging system.

Carriers should also provide the Department with a computer diskette of all information responses, exhibits, and briefs prepared using electronic spreadsheet or word processing programs. Such diskettes should be filed with the Department's Economic and Financial Analysis Division of the Office of Aviation Analysis, X-55, Room 6401, 400 Seventh Street, S.W., Washington, D.C. 20590. Diskettes should be DOS formatted. Submissions prepared with Microsoft Excel ® (version 5.x or earlier), Lotus 1-2-3 ® (version 3.x or earlier), Microsoft Word ® (version 6.x or earlier), or WordPerfect ® (version 5.2 or earlier) should be filed in their native formats. Parties may also file exhibits or briefs via e-mail to our Internet address: dot_dockets@postmaster.dot.gov. Files sent via e-mail should be ASCII (text only) format. Parties using other software may either (1) file IRs, exhibits and briefs in the foregoing formats, or (2) contact Mr. Mike Lane at 202-366-2352 for format compatibility information or to seek a waiver, which will be considered on an *ad hoc* basis. Submissions in electronic form will assist the Department in quickly analyzing the record and preparing its decision. The paper copy of all submissions, however, will be the official record.

days scheduled, classes of service offered, and the limitations, if any, on the number of seats available for each class of service;

(b) Separate passenger traffic forecasts on an O&D market-by-market (city-pair) basis (single-plane and on-line connecting and, to the extent possible, interline connecting) for the 12 months ending December 31, 1997. The forecasts should be based upon the applicant's proposed schedules and should detail specifically the data sources of all traffic. Include any anticipated traffic changes in other markets on the applicant's existing system in which service will be altered as a result of the proposal in this case. The basis for any forecasting technique used should be clearly explained. Indicate any anticipated seasonal fluctuations;

(c) An indication whether or not the aircraft to be used in the proposed schedules are on hand or on order. If on hand, indicate where and to the extent to which those aircraft are currently being used. If on order by purchase or lease, indicate when they will be delivered and how the aircraft will be financed. Indicate whether the aircraft to be used comply with FAR36. If not, indicate plans for achieving compliance;

(d) Estimated number of gallons of fuel to be consumed by aircraft type in the forecast year as a result of the proposed service;

(e) A description of any code-sharing agreements with foreign carriers providing for the applicant's proposed service to be marketed under the foreign carrier's codes, or for U.S.-Peru service operated by the foreign carrier to be marketed under the applicant's code, including a description of integrated connecting services to be provided by the applicant's code-sharing partner(s).¹²

(f) Responses to the following interrogatories:¹³

(1) Will the carrier, if selected as backup, accept a condition in its certificate which (a) permits it to implement authority within the first year should the primary carrier withdraw from the market, and (b) expires at the end of one year should the authority not be activated?

(2) Will the carrier selected for primary authority accept a condition in the certificate requiring institution of service by a date specified by the Department? What date should the Department specify?

¹² Traffic forecasts under III.B.1.(b), *supra*, should separately show connecting feed from the applicant's foreign-flag code-sharing partner(s).

¹³ Any certificate issued in this case for primary authority will be for five years' duration, and any backup certificate issued will be for one year.